HC-78

(28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 574/ सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT: (In jail)	Jhumuk Lal Sahu, S/o Man Singh Sahu, aged about 50 years, R/o Village Retal, P.S. Mahasamund, Distt. Mahasamund (C.G.)
	- Versus -	
	RESPONDENT:	The State of Chhattisgarh, Through P.S. Mahasamund, Distt. Mahasamund (C.G.)

{Criminal appeal under Section 374 (2) of the Code of Criminal Procedure}

Single Bench: Hon'ble Mr. Justice Dhirendra Mishra

23-11-2007

Mr. R.K. Jain, Advocate, appears as per the instructions of Mrs. Kiran Jain, counsel for the appellant.

Mr. Neeraj Mehta, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

1. This appeal is directed against the judgment of conviction and order of sentence dated 14th May, 2004 passed in Sessions Trial No.473/2001 by the 2nd Additional Sessions Judge, Mahasamund, whereby learned Additional Sessions Judge has convicted the appellant under Sections 450, 342 & 376 of the I.P.C. and sentenced him to undergo R.I. for seven years & fine of Rs.500/-, in default of payment of fine to further undergo R.I. for three months; R.I. for one year; and R.I. for seven

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years & fine of Rs.500/-, in default of payment of fine to further undergo R.I. for three months, respectively.

2. Case of the prosecution, in brief, is that the prosecutrix aged about 25 years resides with her father at Village: Retal. On 14-6-2001, she was alone in her home as her father had gone to another village and her mother had gone to work in the field. The accused came to her house, dragged her inside the room and committed rape with her, when she tried to shout, he gagged her mouth by inserting a cloth and after committing the offence, he fled from there. She narrated the incident to Neemkaran Patel and also to her father after his return and other villagers. The Panchayat was also convened in the village, however, the appellant did not attend the Panchayat and fled away. Thereafter, the report of the incident was lodged on 19-6-2001 by the prosecutrix. The F.I.R. is Ex.P-5. The prosecutrix was sent for medical examination where Dr. Alka Pardal (PW-3) examined her and gave her medico legal examination report of Ex.P-3. Charge sheet was filed against the appellant showing him absconding and he could be arrested only on 13-9-2003 after more than two years of the incident, in the Court of Chief Judicial Magistrate, Mahasamund and the same was received on transfer for trial by learned Additional Sessions Judge, Mahasamund.

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3. Learned counsel for the appellant submits that the report was lodged after more than five days of the incident and there is no explanation for delay in filing the report. Even the explanation that Panchayat was convened in the village is also not sufficient as the report was lodged after three days of conducting of the Panchayat. He further argued that in the first information report the prosecutrix alleged that the accused did some bad act and the Investigating Officer registering the first information report interpreted it to be rape. Even the witnesses of Panchayat namely, Rameshwar (PW-1) and defence witness No.1 Manoj Chandrakar who were present in the said Panchayat have stated that the prosecutrix mentioned only about eve teasing. The accused was not sent for medical examination to confirm that he was capable of performing sexual intercourse. In the circumstances, offence, if any, committed by the appellant does not travel beyond Section 354 of the I.P.C.

4. On the other hand, learned Panel Lawyer for the State supported the impugned judgment and contended that the prosecutrix is a deserted lady, she is suffering from polio and therefore, she could not offer resistance, she immediately disclosed about the fact to Nimkaran @ Nimmu Patel (PW-6) and also to her father Ramadheen (PW-5). Her statement is duly corroborated from the version of these witnesses.

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The appellant has examined the prosecutrix herself in his defence and while deposing as a defence witness, she has stated that immediately after the incident, the appellant absconded from the village for a period of two years and his sons had pressurized her for changing her statement, they had also beaten her & her family members which was reported by her vide reports of Exs.P-12 & P-13.

5. I have heard learned counsel for the parties and perused the record as also the impugned judgment.

6. Conviction of the appellant is based on the statement of the prosecutrix who has deposed that on the date of incident, she was alone in her house when at about 11 a.m. the accused came in her house, forcibly took her inside the room and committed rape after closing & bolting the door from inside and after inserting cloth in her mouth and thereafter, he fled from there. She disclosed about the incident to Nimmu Patel and on return of her father, she also narrated him about the incident and thereafter, lodged the report of Ex.P-5. In cross-examination, she has admitted the suggestion that after the incident Panchayat was convened in the village, however, the accused had absconded from the village and the meeting was convened after two days of the incident. She has denied the suggestion that she had made second husband after her

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husband deserted her. She has also denied the suggestion that she in fact wanted that the accused should keep her as his wife which was refused by him. In paragraph 8 of her deposition, she has stated that she tried to defend, however, since her one leg is affected from Polio, she could not resist. The defence has examined this witness as defence witness on 30th April, 2004 and on that day also she has reiterated her allegations in the examination-in-chief. She has also stated that her father and the accused have cordial relations, however, she has denied the suggestion that she had made false report at the instance of villagers or that the accused did any bad act with her. On being cross-examined by the A.G.P., she has stated that the accused had absconded from village and did not attend the meeting since he had committed mistake. Sons of the accused had pressurized her to change the statement and had also beaten her & her family members for this purpose and she had lodged report against them on both the occasions when she was beaten.

7. Nimkaran @ Nimmu Patel (PW-6) has corroborated the statement of the prosecutrix and has stated that the prosecutrix came weeping to his house and on enquiry, she narrated about the incident. In cross-examination, he has stated that she came to his house around 12 noon. He has further stated that he had participated in the meeting in the

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village and in the said meeting the prosecutrix was advised to lodge the report. Ramadheen (PW-5), father of the prosecutrix, has also corroborated the statement of the prosecutrix in material particulars.

8. So far as the first submission of learned counsel for the appellant that there is delay of more than five days in filing the F.I.R. is concerned, it is true that the incident occurred on 14th June, 2001, whereas the report has been lodged only on 19th June, 2001 with a delay of five days, however considering the fact that after the incident a Panchayat was convened in the village and in the said Panchayat, the appellant was also called who has fled from the village since the date of incident, delay of five days in lodging the report shall not *ipso facto* make the version of the prosecutrix doubtful, particularly in view of her deposition in which she has consistently alleged the manner in which the offence was committed.

9. The second argument advanced by learned counsel for the appellant that in the first information report lodged by the prosecutrix she has mentioned only बुरा काम which has been interpreted by the Police Officer as rape is concerned, from the perusal of the first information report it is observed that after the accused dragged the prosecutrix inside the room, he threw her on ground after bolting the door and thereafter,

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committed बुरा काम (rape) and after committing बुरा काम, he fled from there. The F.I.R. is to be read in the light of her statement given before the Court. It is true that Rameshwar (PW-1) has mentioned in his deposition that in the Panchayat, the prosecutrix had told that the accused had eve teased her. Defence witness Manoj Chandrakar has also accepted that a meeting was convened in the village and in the said meeting appellant Jhumuk Lal did not participate and it was decided that the prosecutrix should lodge the report. Information about the incident was given by Ramadheen. Since the accused did not attend the meeting, no decision could be taken. In cross-examination by the State, this witness has stated that Jhumuk Lal did bad things to the prosecutrix as he eve teased her.

10. If the statements of these witnesses are examined with the statements of the prosecutrix, it can be safely inferred that बुरा काम, which has been mentioned in the first information report and by these witnesses in fact, relates to commission of rape, as deposed by the prosecutrix in her statement on oath. Subsequent conduct of the appellant that he absconded from the village for a continuous period of more than two years and the allegations of the prosecutrix that in the mean while, sons of the appellant tried to pressurize the prosecutrix to change her statement, fortifies the allegations of the prosecutrix. The

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fact that the appellant examined the prosecutrix in her defence also establishes her charge that she was pressurized by the sons of the appellant to change her statement.

11. So far as the third submission that the prosecution has not examined the appellant and has not referred him to the doctor for medical examination to establish that he was capable to perform sexual intercourse is concerned, no such defence has been taken by the accused during trial, even in his statement under Section 313 of the Cr.P.C. also, no such defence has been taken by him that he is not capable of performing sexual intercourse. Therefore, lacuna, if any, in the prosecution case of not examining the accused during trial does not prejudice the defence of the appellant.

12. In the result, the appeal preferred by the appellant is without any substance and the same is dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

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Date